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NANCY SWEENEY
CLERK DISTRICT COURT
FILED BY: LISA KALLIO
DEPUTY

2013 AUG 30 A 11:56

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY
THE STATE OF MONTANA, | Doc 3-1337

Plaintiff,

V.

ROBERT MCKAY,

Defendant.

Case No. DDC 2013-267

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO FILE INFORMATION

[illegible]

After being duly sworn the undersigned deposes and states:

1. I am a Special Assistant Attorney General by virtue of my employment with the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI). I am also a duly appointed, qualified, and acting Special Deputy Lewis and Clark County Attorney for the purpose of prosecuting this case. I am familiar with the investigation relating to ROBERT MCKAY (Defendant).

2. I request that the Court determine probable cause exists to allow the State to file an Information alleging the Defendant committed an offense in Lewis and Clark, Yellowstone, Gallatin and other Montana counties, based upon information set forth herein that was developed during an investigation conducted by a CSI criminal justice investigator. More specifically, the Information

1 alleges the Defendant committed the following offense: COUNT I: FRAUDULENT PRACTICES
2 (common scheme), a FELONY, in violation of Mont. Code Ann. § 30-10-301(1)(b).

3 3. Venue is proper in Lewis and Clark County pursuant to Mont. Code Ann. §§ 46-3-112(2) and
4 46-3-115 because acts that form the basis of the charge against the Defendant occurred or continued in
5 more than one county, all of them having a nexus to Lewis and Clark County. *See e.g. State v. Cooney*,
6 271 Mont. 42, 894 P.2d 303 (1995).
7

8 4. A criminal justice investigator has made a full and careful investigation of the facts and
9 circumstances surrounding the commission of the offense, so far as they are known or ascertainable, and
10 your Affiant believes it a proper case for the filing of the Information that accompanies this affidavit.
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12 5. The facts establishing probable cause are as follows:

13 Defendant sought to develop a mill which could extract gold from tailings at a former gold mine
14 located in southeast Gem County, Idaho. Defendant founded three companies to achieve this, one of
15 which was Highlander Holdings, LLC. On or about May 19, 2009, the Defendant registered Highlander
16 Holdings, LLC (Highlander), with the Montana Secretary of State. The Defendant was listed as the
17 Manager of Highlander. Highlander was the capital vessel for the future mine. The Defendant sought to
18 raise capital for Highlander in two ways: by offering convertible promissory notes secured by real
19 property in Jefferson County, Montana, and by selling his own shares of Highlander.
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21 Beginning in June 2009, the Defendant began soliciting investors for the purpose of purchasing
22 convertible promissory notes in Highlander. These notes totaled \$650,000.00 and were not registered
23 with the CSI or with the Securities and Exchange Commission (SEC). Each note included a
24 "Conversion Privilege and Call Provision" to convert the note into one ownership unit of Highlander for
25 each \$100,000.00 principal balance outstanding. Each note carried a term of seven percent interest per
26 annum with the notes maturing on July 31, 2012. To date, no interest has been paid, no conversion has
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1 occurred, and no principal has been restored. The Defendant failed to disclose the extent of liens against
2 the property, failed to disclose that there were multiple promissory notes secured by the same property,
3 and failed to disclose the fact that the properties were subject to litigation. The properties are currently
4 in foreclosure.

5 Beginning in May 2010, and based largely upon the advice of counsel, Defendant began offering
6 and selling his own personal units to investors throughout the country. The money raised went into an
7 account called R.J. Investments, which is wholly owned by the Defendant. The approximately
8 \$3,569,166.67 in proceeds received from the sale of 30.4833 of the units taken by Defendant to 24
9 investors went into this personal bank account. Defendant subsequently lent a portion of this money to
10 Highlander and recognized a loan payable to himself for the money on Highlander's balance sheet. The
11 money that was not lent back to Highlander went to Defendant's personal benefit. Investors were never
12 told how these funds were actually being used.

13 After numerous discussions with the Defendant through his counsel, the State and Defendant
14 have entered into a plea agreement, filed concurrently with this pleading, to resolve the State's
15 allegations.

16 Based on the foregoing, the undersigned requests the Court find that probable cause exists and
17 allow the State to prosecute the Defendant in the manner provided by law.

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19 DATED this 29th day of August, 2013.
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AFFIANT

SUBSCRIBED and SWORN to before me by _____, this _____ day
of _____, 2013.